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NOTICE OF ALLOWANCE AND FEE(S) DUE

46263

7590

02/19/2010

SCULLY, SCOTT, MURPHY, & PRESSER, P.C.
400 GARDEN CITY PLAZA
SUITE 300
GARDEN CITY, NY 11530

EXAMINER

CHO/NACKI, MELLISSA M

ART UNIT

PAPER NUMBER

2164

DATE MAILED: 02/19/2010

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|----------------------------|------------------|
| 10/079,458 | 02/20/2002 | William Frank Micka | TUC920010091US1 (14914) | 6646 |
| TITLE OF INVENTION: INCREMENTAL UPDATE CONTROL FOR REMOTE COPY | | | | |

| APPLN. TYPE | SMALL ENTITY | ISSUE FEE DUE | PUBLICATION FEE DUE | PREV. PAID ISSUE FEE | TOTAL FEE(S) DUE | DATE DUE |
|----------------|--------------|---------------|---------------------|----------------------|------------------|------------|
| nonprovisional | NO | \$1510 | \$300 | \$0 | \$1810 | 05/19/2010 |

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS** FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail **Mail Stop ISSUE FEE**
Commissioner for Patents
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or Fax **(571)-273-2885**

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

46263 7590 02/19/2010

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SUITE 300
GARDEN CITY, NY 11530

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

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| (Depositor's name) |
| (Signature) |
| (Date) |

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| EXAMINER | ART UNIT | CLASS-SUBCLASS |
|-----------------------|----------|----------------|
| CHOINACKI, MELLISSA M | 2164 | 707-203000 |

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB-122) attached.
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB-47; Rev 03-02 or more recent) attached. Use of a **Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1
(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2
3

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
☐ Publication Fee (No small entity discount permitted)
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4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
☐ Payment by credit card. Form PTO-2038 is attached.
☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

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This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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| CHOYNACKI, MELISSA M | | | | |
| ART UNIT | | | PAPER NUMBER | |
| 2164 | | | | |

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Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 422 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 422 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Notice of Allowability

Application No.

10/079,458

Examiner

MELISSA M. CHOJNACKI

Applicant(s)

MICKA, WILLIAM FRANK

Art Unit

2164

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 12/3/2009.
2. ☒ The allowed claim(s) is/are 1-11, 13-28, 30-34, 36-46 and 48-58.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION
EXAMINER'S AMENDMENT

1. The interlineations or cancellations made in the specification or amendments to the claims could lead to confusion and mistake during the issue and printing processes. Accordingly, the portion of the specification or claims as identified below is required to be rewritten before passing the case to issue. See 37 CFR 1.125 and MPEP § 608.01(q).
2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Eunhee Park on 12-February-2010.

The application has been amended as follows:

Claim 18 : (Should Read)

A system for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link, the system comprising:

--a processor memory;--

means for destaging from cache memory modified data to a first volume at the primary site for a current database update and updating one or more bits in a first bitmap at the primary site that indicate one or more tracks on the first volume that are to be overwritten with the modified data, said updating one or more bits being a first point in time virtual copy of the modified data of the first volume to a second volume, wherein the first point in time virtual copy updates the first bitmap and no physical data is copied from the first volume to the second volume;

first means for transferring the first bitmap to a second bitmap at the primary site for indicating the modified data that is to be transmitted to a third volume, which is at the remote site, for the current database update;

means for synchronizing the second volume with the third volume for the current database update by transmitting the modified data from either the first volume or the second volume depending on bit setting in the first bitmap, to the third volume as indicated by the one or more bits in the second bitmap; and

second means for performing a point in time virtual copy of the modified data of the third volume to a fourth volume, which is at the remote site.

Allowable Subject Matter

3. Claims 1-11, 13-28, 30-34, 36-46, and 48-58 are allowed.
4. The following is an examiner's statement of reasons for allowance:

The Appellants' arguments in the Appeal Brief filed on April 15, 2005, have been fully considered and are found persuasive.

The prior art of record Milillo et al. (U.S. Patent No. 6,643,671) in view of Beal et al. (U.S. Patent No. 6,253,295) [As disclosed in applicants "Information Disclosure Statement" filed 2/20/2002], in view of Mika et al. (U.S. Patent No. 6,189,079) [As disclosed in applicants "Information Disclosure Statement" filed 2/20/2002], in view of Crockett et al. (U.S. Patent No. 5,504,861), does not teach, disclose or suggest:

A method for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link, the method comprising: destaging from cache memory modified data to a first volume at the primary site for a current database update and updating one or more bits in a first bitmap at the primary site that indicate one or more tracks on the first volume that are to be overwritten with the modified data, said updating one or more bits being a first point in time virtual copy of the modified data of the first volume to a second volume, wherein the first point in time virtual copy updates the first bitmap and no physical data is copied from the first volume to the second volume; transferring the first bitmap to a second bitmap at the primary site for indicating the modified data that is to be transmitted to a third volume, which is at the remote site, for the current database update, the transferring including at least inverting bits of the first bitmap to the second bitmap; synchronizing the second volume with the third volume for the current database update by transmitting the modified data from either the first volume or the second volume depending on bit setting in the first bitmap, to the third volume as indicated by the one or more bits in the

second bitmap; and performing a second point in time virtual copy of the modified data of the third volume to a fourth volume, which is at the remote site, as claimed in independent claim 1.

Claims 2-11, 13-17, 53, and 57 are allowed because they are dependent on independent claim 1.

A system for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link, the system comprising a processor memory; means for destaging from cache memory modified data to a first volume at the primary site for a current database update and updating one or more bits in a first bitmap at the primary site that indicate one or more tracks on the first volume that are to be overwritten with the modified data, said updating one or more bits being a first point in time virtual copy of the modified data of the first volume to a second volume, wherein the first point in time virtual copy updates the first bitmap and no physical data is copied from the first volume to the second volume; first means for transferring the first bitmap to a second bitmap at the primary site for indicating the modified data that is to be transmitted to a third volume, which is at the remote site, for the current database update; means for synchronizing the second volume with the third volume for the current database update by transmitting the modified data from either the first volume or the second volume depending on bit setting in the first bitmap, to the third volume as indicated by the one or more bits in the second bitmap; and second means

for performing a point in time virtual copy of the modified data of the third volume to a fourth volume, which is at the remote site, as claimed in independent claim 18.

Claims 19-28, 30-34, and 54 are allowed because they are dependent on independent claim 18.

A program storage device, tangibly embodying a program of instructions executable by a machine to perform a method for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link, the method comprising destaging from cache memory modified data to a first volume at the primary site for a current database update and updating one or more bits in a first bitmap at the primary site that indicate one or more tracks on the first volume that are to be overwritten with the modified data, said updating one or more bits being a first point in time virtual copy of the modified data of the first volume to a second volume, wherein the first point in time virtual copy updates the first bitmap and no physical data is copied from the first volume to the second volume; transferring the first bitmap to a second bitmap at the primary site for indicating the modified data that is to be transmitted to a third volume, which is at the remote site, for the current database update; synchronizing the second volume with the third volume for the current database update by transmitting the modified data from either the first volume or the second volume depending on bit setting in the first bitmap, to the third volume as indicated by the one or more bits in the second bitmap; and performing a second point

in time virtual copy of the modified data of the third volume to a fourth volume, which is at the remote site, as claimed in independent claim 36.

Claims 37-46, 48-52, and 55 are allowed because they are dependent on independent claim 36.

A method for backing up data from a primary site to a remote site, comprising destaging modified data from cache memory to a first volume at the primary site for a current database update; performing a first point in time virtual copy of the modified data of the first volume to a second volume at the primary site by setting a first bitmap wherein no physical data is copied from the first volume to the second volume; synchronizing the second volume with a third volume at the remote site by transmitting the modified data from either the first volume or the second volume depending on bit setting in the first bitmap, to the third volume; and after completion of the synchronizing, performing a second point in time virtual copy of the modified data of the third volume to a fourth volume at the remote site; wherein, during the synchronizing, the first volume is accessible to a host at the primary site, and the fourth volume is accessible to a host at the remote site, as claimed in independent claim 56.

Claim 58 is allowed because they are dependent on independent claim 56.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELLISSA M. CHOJNACKI whose telephone number is (571)272-4076. The examiner can normally be reached on 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on (571) 272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/079,458

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Art Unit: 2164

/Charles Rones/

Supervisory Patent Examiner, Art Unit 2164